

(1990) 05 GAU CK 0019
In the Gauhati High Court
Case No : Civil Rule No. 51 of 1983

Subhas Chandra Paul

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 28-05-1990

Acts Referred:

Tripura Sales Tax Act, 1976 — Section 12(1), 12(1), 9(3), 9(3)

Citation : (1990) 1 GLJ 521 : (1991) 1 GLR 332

Hon'ble Judges : B.P.Saraf, J and H.K.Sema, J

Bench : Division Bench

Advocate : K.N.Bhattacharjee, H.Lodh, A.M.Lodh, Advocates appearing for Parties

Judgement

Dr. B. P. Saraf, J.

The petitioner is a dealer registered under the Tripura Sales Tax Act, 1976, hereinafter referred to as "the Act." He was assessed under the Act in respect of his turnover for the year ending 31.3.1979 by the Superintendent of Taxes by order of assessment dated 22.5.81. The order was passed under section 9(3) of the Act.

On receipt of the order of assessment, the petitioner filed an application before the Superintendent of Taxes under section 12 (1) of the Act for rectification of mistake apparent from the records. The mistake, according to the petitioner, was the failure to consider the revised return filed by him before the completion of the assessment under section 8(3) of the Act. His contention was that the assessment had been made erroneously on the basis of the original return, which, in fact, had been revised. The said petition for rectification was rejected by the Superintendent of Taxes by his order dated 4.10.82. In the said order it was, however, admitted that the dealer had submitted a revised return showing lesser turnover than what had been shown in the original return. The prayer for rectification was rejected on the sole ground that the alleged mistake was a mistake of fact which cannot be considered in a petition under section 12 (1) of

the Act. The petitioner filed a revision petition before the Commissioner of Taxes against the said order which was also rejected. Aggrieved by the aforesaid orders, the present writ petition has been filed.

We have heard Mr. A. M. Lodh, learned counsel for the petitioner. We have also heard Mr. K. N. Bhattacharjee, learned Government Advocate. The facts of the case are not in dispute. The undisputed position is that a revised return had, in fact, been filed by the petitioner under section 8 (3) of the Act before completion of the assessment. While making the assessment the said revised return was not considered. The assessment was made on the basis of the original return instead of the revised return. The point for determination, therefore, is whether it is a mistake apparent from the face of the records which can be rectified under section 12 (1) of the Act or not.

Subsection (1) of section 12 of the Act empowers the authority, who made the assessment to rectify any mistake apparent from the records of the case. The period of limitation for taking such action is three years. Such a mistake may be brought to his notice by a dealer. It can also be rectified suo motu by the authority. The first question that falls for determination is what is a "mistake" contemplated by section 12 (1). Is it a mistake of law or a mistake of fact or both? According to the Superintendent of Taxes a mistake of fact is not one covered by section 12 (1) of the Act. The submission of a revised return and nonconsideration thereof, according to him, was a mistake of fact. It is on this basis that the petition for rectification was rejected. The Commissioner of Taxes instead of deciding the point at issue went into the examination of the justification of submission of revised return or the merits thereof, which was not permissible in such a case in exercise of revisional jurisdiction.

Section 12 (1) speaks of "Mistake". It does not specify the nature of the mistake except that it restricts the power of rectification to "mistakes" which are apparent from the records of the case. Though section 12(1) did not come up for interpretation earlier, it is well settled by a series of decisions of the Supreme Court and various High Courts on identical provisions of enactments like Income Tax and taxation statutes of other States that a mistake contemplated by the section is not confined to a mistake of law.

A mistake of fact, which is apparent on the face of the records, can also be rectified in exercise of the power of rectification. In that view of the matter, the order of the Superintendent of Taxes is not tenable.

The second question that arises for consideration is whether this mistake is a mistake apparent from the records. In our opinion there is no scope for two opinions in this regard. It is definitely a mistake apparent from the records. Under section 9 (3) of the Act, where a return has been submitted it is the basis of initiation of assessment proceedings and the assessment. The return evidently means a subsisting return. Once a return has been revised it is the revised return alone that is operative. Undoubtedly it is an error to make an assessment

on the basis of original return in disregard to the revised return submitted by the dealer. The mistake is patent on the face of the records. It does not require any complicated process of investigation, argument or proof. It is apparent, or self evident. In such a situation, we are of the opinion, that the impugned orders passed by the Superintendent of Taxes and the Commissioner of Taxes rejecting the petition for rectification are not tenable and the same are accordingly set aside.

The Superintendent of Taxes is directed to consider the revised return, give a fresh opportunity to the petitioner to produce necessary evidence and materials in support of his revised return and to make a fresh assessment thereafter in accordance with law.

The learned counsel for the revenue submits that the revised return is not traceable in their records. It will facilitate quick disposal of the case by the Superintendent of Taxes if the petitioner is directed to furnish an authenticated copy thereof. We see no objection in allowing the request. Accordingly, we direct the petitioner to submit a duly authenticated copy of the revised return to the Superintendent of Taxes within two weeks from today.

In the result, this writ petition is allowed. No order as to costs.